**HON'BLE SRI JUSTICE P.S. NARAYANA**

**WRIT PETITION No.25608 of 2006**

**Dated 11th December 2006**

**Between:**

M/s. Bhavani Rubber Industries, Ramalingeswarapet, Vijayawada rep by its Proprietor, N. Sambasiva Rao and others.

.....Petitioners

And

The Vijayawada Municipal Corporation, Vijayawada rep by its Commissioner and others.

.....Respondents

**HON'BLE SRI JUSTICE P.S. NARAYANA**

**WRIT PETITION No.22738 of 2006**

**Dated 11th December 2006**

**Between:**

B. Navamani Raju, Ramalingeswarapet, Vijayawada and others.

.....Petitioners

And

The Commissioner, Municipal Corporation, Vijayawada and others.

.....Respondents

**HON'BLE SRI JUSTICE P.S. NARAYANA**

**W.P Nos.25608 and 22738 of 2006**

**COMMON ORDER:**

Rule nisi.

Elaborate submissions are made by Smt G. Jhansi, learned Standing counsel representing R1 and also Sri S.V Bhatt, learned Sanding counsel representing R2.

Sri O.Manohar Reddy, the learned counsel representing the petitioners would submit that without affording any opportunity the impugned order was made directing the petitioners to close down the activity within 24 hours from the date of receipt of the order. It is also brought to the notice of this Court that there is a connected

W.P. No.22738 of 2006 and in the said order this Court issued Rule nisi on 8-11-2006.

The W.P.No.22783 of 2006 is filed praying for a writ

of Mandamus directing the respondents 1 and 2 to take appropriate steps basing on the proceedings Lr.No.D-5/PCB/RO-VJA/2006, dated

14-8-2006 of the 3rd respondent for shifting of the units of M/s.Bhavani Industries, M/s.Mohini Soap Manufacturing Industries, M/s.Milky Chemical Industries and M/s.Sakhamuri Rubber Manufacturing Unit from the residential area of Santhi Nagar, Ramalingeswarapet, Vijayawada and consequently direct the respondents 1 and 2 not to allow any manufacturing units causing smell, nuisance and pollution in the residential area of the petitioners and to pass such other suitable orders.

Several factual details are narrated in the affidavit filed in support of the writ petition referred to supra, M/s.Bhavani Industries and others had filed W.P.No.25608 of 2006 praying for a writ of Mandamus or any other appropriate writ or directions declaring the order of the 1st respondent passed in Rc.F3-37458/2005 dated 2-11-2006 and the report of the 2nd respondent issued in Lr.No.D-5/PCB/RO-VJA/2006-783 dated 14-8-2006 as illegal, arbitrary and to pass such other suitable orders.

Several factual details are narrated and the main grievance of the petitioners is that without affording any opportunity and without calling for any explanation straight

way issuing of notice of this nature directing the petitioners to close down the activity within 24 Hours from the date of receipt of the notice that too based on yet another direction issued by the 1st respondent dated 14-8-2006 cannot be sustained.

The orders impugned in the present writ petition read as hereunder:-

"Rc.F3-3458/2005 Municipal Corporation

Vijayawada, dated 2-11-2006

**FINAL NOTICE**

(See Section-622 (4) of HMC act 1955 read with Section-7 of Vijayawada Municipal Corporation Act)

Sub:- Public Health – Vijayawada Municipal Corporation – Complaint of Nuisance and pollution – final notice issued for stopping the activity – Reg.

Ref:- 1. Complaint dt 3-8-2006 for residents of Santhi Nagar forwarded to A.P Pollution Control Board.
2. Complaint dt19.9.2006 of the residents of Santhi Nagar
3. Complaint dt.6.10.2006 of the residents of Santhi Nagar.

4. Complaint dt.18.10.2006 of the residents of Santhi Nagar.
5. Lr.No.D-5/PCB/RO-VJA/2006-783 dated 14-8-2006.
6. This office notice dt.4.10.2006.
7. Lr.No.473/PCB/TF-VJA/2006-2344, dt.27.10.2006.
8. This office final notice of even number dated:19.10.06.
9. Complaint dt.1.11.2006 of the Residents of Santhi Nagar.

In the reference first cited the residents of Santhi Nagar First Lane, Ramalingeswarapet, Vijayawada have filed a representation complaining about nuisance being created by the owners of the buildings bearing D.No.20-7-29 and 20-7-29A of Santhi Nagar, Ramalingeswarapet who are running a rubber industry and chemical industry in the names and style of M/s.Bhavani Rubber Industries, M/s.Mohini Soap Manufacturing Industries, M/s.Milky Chemicals Industries and M/s.Shakhmuri Rubber Manufacturing units. In the said complaint it was stated that these units are located in the thick residential area and causing for emitting noxious smells and also causing for sore throat and other itching of skin, burning of eyes and other respiratory problems due to the emission of chemicals and spraying of solutions and also due to grinding of leather and rubber. The said complaints are repeatedly submitting the complaints explaining the gravity of the nuisance.

Since the complaints are regarding the atmospheric pollution, the matter was referred to A.P. Pollution Control Board (APPCB) and in the reference 5th cited, the Environmental Engineer, APPCB Regional Office, Vijayawada has reported that the subject mater units and their surroundings were inspected on 7.8.2006 and observed that the manufacturing units are emitting smell causing nuisance to the complaints and also remarked that these units are operating in the night time also and are located in between residential area. A copy of the said report is enclosed herewith.

In the reference 6th cited, in pursuance of the complaints received and the A.P. Pollution Control Board cited

5th, a notice was issued to the owners/occupants of the premises bearing D.No.20-7-29 and 20-7-29A of Santhi Nagar, Ramalingeswarapet directing them to stop the business which is causing for nuisance in the locality and also posing pollution problems in the area. But the said Owners/occupants have neither complied with the notice, nor submitted their explanation as to why their activity should not be closed. The activity as complained involves manufacture of soaps and chemicals and manufacture of chapels which involve use of chemicals and such activity cannot be allowed within the residential area and amidst residents. The said owners/occupants of the properties i.e., (1) Sri S. Mastan Babu, (2) P.V. Mohan Rao and (3) Sri Nagabhairava Sambasiva Rao who are running the objectionable activity in the names and style of M/s.Bhavani Rubber Industries, M/s.Mohani Soap Manufacturing Industries (S.P. Traders) are therefore, called upon to take this final notice issued under Section-622(4) of HMC Act read with Section-7 of Vijayawada Municipal Corporation Act and directed to close down the activity within 24 Hours from the date of receipt of this notice, failing which action will be taken departmentally for closure of the activity and to seize the premises as per law.

**Encl**: APPCB report as above.

For Commissioner of
Health-
Municipal Corporation
VIJAYAWADA

and

Chief Medical Officer of
Health
MUNICIPAL
CORPORATION
VIJAYAWADA."

and another impugned order passed by the 2nd respondent-A.P Pollution Control Board dated 14-8-2006 reads as hereunder:-

**"ANDRHRA PRADESH POLLUTION CONTROL BOARD**
**REGIONAL OFFICE, VIJAYAWADA.**

***Plot No.41, Sri Kanakadurga Officers' colony, Gurunanak Road,***

***Vijayawada-8***

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*L* r.No.D-5/PCB/RO-VJA/2006-783 Dated 14-08-2005

To

The Commissioner, Vijayawada Municipal Corporation,
Vijayawada.

Sir,

Sub:- Complaint on M/s.Bhavani Industries and M/s.Mohini Soap Manufacturing Industries, M/s.Milky Chemicals Industries and M/s.S.P.Traders, Santhi Nagar, Ramalingewsarapet, Vijayawada – Submission of report – Reg.

Ref:- Complaint forwarded to this officer in 03-08-2006..

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This office in receipt of the complaint submitted by the residents of Santhi Nagar, Ramalingeswarpet, Vijayawada regarding smell nuisance due to operation of M/s.Bhavani Industries and M/s.Mohini Soap Manufacturing Industries, M/s.Milky Chemicals Industries and M/s.SakhAmuri Rubber Manufacturing units vide reference cited above (copy of the complaint enclosed).

The Board Officials inspected the units and its surroundings on 07-08-2006 and recorded the following observations.

1. M/s.Bhavani Industries and M/s.Sakhamuri Rubber Traders are manufacturing of foot ware by uing rubber. The process involves the cutting of the rubber and assembling the rubber into chappals.

2. M/s.Mohini Soap Manufacturing Industries, M/s.Milky
Chemicals Industries are manufacturing soaps.

3. The complainants informed that their families were facing
severe smell nuisance from the units and also informed that
the units were operating night times also.

4. The units were located in between residential area.

In view of the above you are requested to initiate necessary action for shifting of the units from the residential area as to stop smell nuisance in the surrounding areas in the interest of public health and safety of environment.

Yours Sincerely,

Sd/-
ENVIRONMENTAL ENGINEER"

From these impugned orders it appears that on certain representations made without affording opportunity to the writ petitioners these orders were made and consequently a direction had been issued directing the petitioners to close down the activity within 24 hours. It is needless to say granting 24 hours is highly unreasonable. Even otherwise before initiating such action, the 2nd respondent as well as the 1st respondent before making such orders should have put the petitioners

on notice and after affording opportunity to explain their stand should have taken any further action in this regard. In view of the same, this Court is of the considered opinion that the impugned orders cannot be sustained and accordingly are liable to be set aside. In view of the same the writ petition filed by the petitioners in W.P.No.25608 of 2006 is hereby allowed to the extent indicated above by setting aside the impugned orders, however, giving liberty to the respondents to give reasonable opportunity to the petitioners to explain their stand and to pass appropriate orders in this regard and till then not to take any further action in relation thereto. It is needless to say that in the light of the orders passed in the W.P.No.25608 of 2006, the writ petition filed by the writ petitioners some general public in W.P.No.22738 of 2006, no further orders need to be passed in the said writ petition. It is needless to say that in case, the 2nd respondent intends to take any initiation against the petitioners in W.P.No.25068 of 2006 the petitioners to be put on notice.

Accordingly, the W.P. No.25068 of 2006 is hereby allowed to the extent indicated above and the W.P.No.22738 of 2006 is hereby closed at present. No order as to costs.

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***(P.S. NARAYANA, J)***

Dated 11th December 2006

mrb